

**Before the
Federal Communications Commission
Washington D.C.**

In the Matter of)	
)	P. R. Docket 91-258
The State Of Ohio)	
Modification for license)	FCC File Number
WPQF782 to add)	000210606
NPSPAC Frequency)	

To: Public Safety and Critical Infrastructure Branch
Wireless Telecommunications Bureau

**COMMENTS OF THE STATE OF OHIO REGARDING THE PETITION FOR
RECONSIDERATION JOINTLY FILED BY THE CITY OF BROOKLYN, OHIO
AND COUNTY OF MEDINA, OHIO**

INTRODUCTION

The State of Ohio (hereafter, the State) respectfully requests the Federal Commission (the Commission) accept these late filed comments regarding the above Matter. The Joint Petitioners filed their action with the Secretary of the Commission on May 26, 2005 but failed to notify the State, as required by the Commission's rules. The State was notified of the subject petition on June 13, 2005.

These Comments will demonstrate to the Commission that there is no cause for the Commission to reconsider its granting the modification to the States radio station authorization of call sign WPQF782. The State will show that the Joint Petitioners suffered only because of their own mis-conceptions, both of the Commission's rules and the Region 33 NPSPAC Plan, not the actions of the State or the Region 33 Chairman.

These Comments will correspond to the subject Petition to permit ease of connecting the discussion items.

SUBJECT MATTER

1: This document will not address items relating to the International Municipal Signal Association (IMSA) except as noted in Item 3 below. If IMSA chooses to, they can respond on their own behalf.

2: The Region 33 800 MHz Plan (hereafter, the Plan) names the Ohio APCO Local Advisor as the Chair. This was approved by the Commission in 1992. The

Region 33 700 MHz chair is elected by the membership and has no connection with the subject Petition. Except as noted above, neither position has any direct connection with APCO International.

The current Region 33 800 MHz Chairman is merely an employee of the State as are many other regional chairs and Local Advisors around the country. He is not "the person responsible for" the State of Ohio Statewide Wireless Communications Network as stated in the Petition.

3: The State has seen no evidence of "chaos" at IMSA. IMSA is one of the four certified coordinators for public safety frequencies and the State has had no problems in interacting with them. The State has found them to be highly professional and thoroughly efficient.

The term "incestuous relationship" is resented by the State and is unfounded. There have been a number of instances where the State has requested channels at certain locations and the Region 33 Chair has told them there were none available per the Plan. There have been some instances where channels were set-aside in the Plan for the State or other named entities and the previous Chairman authorized their use by still other entities. The State never made an issue of this, rather desiring to maintain inter-agency harmony that is so important between public safety agencies. If the Commission desires, they may verify the fairness, impartiality and assistance rendered to recent applicants by the Region 33 Chair.

Certain frequencies in the Plan are "agency or city specific". Otherwise, nowhere in the Plan is agency specific ownership bestowed. The remaining frequencies (channels) are for general public safety use in or near the county named. No language in the Plan prohibits the State from applying for any these channels.

The Ohio Turnpike Commission, or "Turnpike Authority", as named in the subject Petition, is a "Body Politic" of the State of Ohio and is by definition a "state agency". Five of its seven members are appointed by the Governor of Ohio with the other two being a State Representative and a State Senator. The State of Ohio 800 MHz system already provides full coverage to the Turnpike's entire 241-mile long service area across northern Ohio. The Ohio State Highway Patrol, one of the founding and primary users of the State 800 MHz system, services the toll road under contract with the Turnpike Commission and is in the process of purchasing radios to equip their fleet of cars assigned there.

Two of the three frequencies applied for by the City of Brooklyn (hereafter Brooklyn) are clearly defined in the Plan as "Turnpike" channels. This means that they were clear of other allocation in the entire northern portion of Ohio and could be used anywhere along and in the vicinity of the Turnpike to provide needed coverage. This fact was reported to Brooklyn's agent, Alan Close, by the

Region 33 Plan Chairman in an e-mail on February 25, 2005. This e-mail was included in the original Petition.

The other two channels, referred to in the Petition as “allocated to Medina County” were indeed applied for by the State and granted by the Commission. However, they are not “allocated to” but rather “allocated for” general public safety use in or around Medina County. One of the State’s sites in question is, in fact, located in Medina County and the other a short distance away, but actually in Cuyahoga County, at the very busy Cleveland Hopkins International Airport, certainly a “Critical Infrastructure” location in the view of Homeland Security. To obtain maximum efficiency, the plan must allow for some flexibility of channel assignment, particularly in today’s heightened emphasis on Homeland Security. When the Commission approved Ohio’s and other Regional Plans such an atmosphere did not exist.

To the Region 33 Chair’s knowledge, and certainly since he became Plan Chairman in 2004, no Medina County agency has ever made the slightest inquiry regarding 800 MHz channels since the plan was accepted by the Commission in 1992. It is unclear why Medina County is a participant in this Petition and how they have been harmed.

The State of Ohio 800 MHz system provides communications and full interoperability services to a great number of state and local agencies in this geographic area, including some in Cuyahoga County, as will be elaborated upon further in these Comments. To leave needed channels fallow after 13 years, especially when they can be put to beneficial public safety use, is certainly not in the public interest. “The greatest good for the greatest number” is a point to consider in a situation such as this.

“The most disturbing event” referred to in the Petition and noted as footnote 17 refers to the Plan’s “Documentation Required with an 800 MHz NPSPAC Application”. Since the Petitioner did not include it in their filing it has included here as Attachment 1. In reviewing the records of the 800 MHz Chairman, there is no record of his receiving the e-mail reply exhibited in the Petition that Alan Close, agent for the applicant, reportedly sent him on February 10, 2005. In examining the e-mail copy supplied as an attachment to the Petition, it is evident that the e-mail address is incorrect, which would explain why it was not received. Several more e-mails exhibited show paul.meyer@ohio.gov, which is an incorrect address. His correct address is paul.mayer@ohio.gov and is well publicized, both on the FCC web site and elsewhere. Since he had originally sent the request to IMSA’s contractor, he was not expecting a reply from Mr. Close, therefore, he never asked him about it. The e-mail reply copy provided is also incomplete and poses some questions to the Chairman. If he had received it, he would have immediately responded, noting the additional information needed and answering his questions.

The allegation that *the State filed an application for Brooklyn's channels the day after* they sent the e-mail (which was never received because of the incorrect address) though may be correct chronologically is in itself, ludicrous. Those familiar with the application process, know that the preparation of a complicated, complete and correct Form 601 of the magnitude of WQPF782 is not a "next day" task. The application in question had been in the preparation stage for more than a week and certainly was not submitted intentionally to conflict with Brooklyn's application, which was defective anyway, seeking frequencies for which they were ineligible.

Clarification is also needed regarding their footnote 19 that states "It is a policy of APCO that no NPSPAC Chairperson can certify his own applications". APCO policy in fact states that *no local advisor can coordinate* their own applications. The act of "certifying" NPSPAC applications is not coordination, since the Plan's channels are pre-coordinated and approved by the Commission during the Plan approval process. It merely certifies approval regarding the pre-existing Plan. As for not mentioning the State's application, typically, information from one applicant is not shared with another applicant.

In truth, as stated by the Petition, *the Chairman didn't mention that the State of Ohio applied for the City of Brooklyn's channel* because it wasn't Brooklyn's channel. As stated previously, it was clearly identified in the Plan as allocated for the Turnpike, thus available for the State system, as Brooklyn had been previously advised.

4: The State of Ohio did apply for and receive license for *nearly every NPSPAC channel within the State*. The Petitioners state, and perhaps there are in fact, 205 NPSPAC channels licensed on call sign WPQX322; we didn't count them. There are a total of 292 channels on that license coming from the entire 800 MHz public safety band.

The need for WPQX322 as a Fixed Base Temporary (FBT) authorization was determined back in 2000 by the State's prime contractor, then TRW, now Northrop-Grumman. A number of original State remote communication sites (RCS) needed to be re-located due to various problems relating to construction of a \$272 Million dollar, 201-site statewide system. TRW requested the State apply for an FBT license covering all frequencies in the MARCS Frequency Plan at the time of filing. The sole purpose of this license was to permit flexibility in locating permanent State sites during the construction process. The Commission granted this application in August, 2000. It has never been used *as an attempt to prevent future applicants from requesting these channels*. Those knowledgeable of the Commission's rules know that, by the fact that they are secondary use, would not prevent an applicant from applying for any of them.

PUBLIC INTEREST STATEMENT

The Commission's decision to grant the modification to WPQF782 is clearly in the Public Interest in that it allows the State a greater system capacity and will permit a larger user base. The State has had a number of inquiries from Cuyahoga County agencies about participating in the system, primarily for emergency coordination and interoperability. The State has been reluctant to permit this due to its limited capacity, particularly in the southwest portion of Cuyahoga County; a densely populated and high volume radio use area. However, with the upgrade provided by the modification of WPQF782, it becomes more feasible.

Two primary goals were achieved by the State with this upgrade. First, the State's site at Cleveland Hopkins International Airport was increased from three to five voice channels. With the current emphasis on Homeland Security, if an incident were to occur at this busy facility, the State is better able to handle the increased traffic load.

Secondly, the Police Department of the Greater Cleveland Regional Transit Authority is very anxious to use the State system for their day-to-day operational needs. GCRTA PD is the second largest police agency in Cuyahoga County and the seventh largest in the State, with jurisdiction reaching into four counties.

These two instances alone indicate that granting this application was clearly in the Public Interest.

In addition, on March 16, 2005, Lt. Denis Ryan of the Parma Fire Department, appeared before the Ohio Statewide Interoperability Committee (SIEC), a Commission sanctioned body, to outline his city's plan for a multi-jurisdictional system, serving a number of agencies in southwest Cuyahoga County. Key to this system's existence was receiving a Federal Homeland Security grant request they had submitted. In short, he implied, No Grant, No System.

The Grant was not awarded and until receiving the copy of the subject Joint Petition, neither the Region 33 Chairman nor the State was aware that Brooklyns application was in any way connected. Still further, Parma had not inquired of the Region 33 Committee if, in fact, any spectrum was available to expand their system.

SUMMARY AND CONCLUSION

Neither the Chairman nor the State abused the system by their actions in providing more capacity to an already operational system for public safety

interoperability versus a planned system that depended on forth-coming grant money that did not materialize.

The State feels that the subject frequency allocations were handled fairly, in the spirit of the greatest benefit for the greatest number of current public safety users.

The State suggests that a more logical approach, in the future, would be for agencies planning a 'system expansion' to first, investigate the current resources of their own, and other potential participating agencies. Secondly, investigate what, if any, spectrum is available in the desired frequency band in their geographic area to accomplish their goal. Parma may have done the first; they did not do the second.

One other issue must come to light concerning Parma's proposed system expansion. Parma is the only public safety agency in the area operating with Ericsson (GE) EDACS technology. All other agencies in southwest Cuyahoga County, who might participate in this joint 800 MHz venture, utilize Motorola technology, as does the State, which is incompatible with EDACS except for the five Plan designated analog mutual aid, or *common* channels.

The Joint Petitioners' contention that a Frequency Advisory Committee, as called for in the Plan, does not exist is flawed. Historically, the Ohio APCO FAC has consisted primarily of the Chapter Executive Board, which currently is made up mostly local and county agency members. Also historically, the Committee is not called upon unless there is contention or conflict. In the subject case, there was no conflict because Brooklyn had applied for two channels they were clearly not eligible for according to the Plan.

There is no "incestuous" activity involved here. The Turnpike is a State agency; the State 800 MHz system provides coverage over their entire service area but needed more system capacity in the high traffic Cuyahoga County area traversed by the Turnpike and the Ohio State Highway Patrol is preparing to equip its fleet of cars serving the Turnpike with State system radios. Therefore, the State needed to increase its infrastructure to accommodate that, and other such needs.

Once again, the Greatest Good for the Greatest Number.

Prior to the stated SIEC meeting, neither the Region 33 Chairman nor the State was aware of the existence of "the Southwest Council of Governments" and in fact still don't know who all of these agencies are. From the geographic area suggested however, some of the likely participants (the cities of Parma Heights, Brook Park, North Royalton and Strongsville) are already participants in the State system. Given the time constraints involved in this filing, the State has not been able to investigate this issue further. The issue becomes moot, however;

because there is not sufficient spectrum available in the Plan to accommodate Parma's plan anyway.

Therefore: 1) Granting the State's application for modification of WPQF782, for the reasons stated above, was CLEARLY in the public interest.

2) If the Commission determines that an investigation of Region 33 practices is warranted, it can expect the fullest cooperation of the Committee

3) Subject to the findings of number 2 above, full cooperation.

4) Subject to the findings of number 3 above, again full cooperation.

5) The State would welcome an evaluation of the year 2000 granting of WPQX322, the Fixed Base Temporary (FBT) license. This application was prepared through the combined efforts of the State, the State's then prime contractor, TRW, now Northrop-Grumman, and Mr. Robert Gurss, Esq., who at the time was representing TRW before the Commission on similar and related issues

6) If a new Region 33 Committee is deemed necessary by the Commission, and the Region 33 Plan, which seems to be the Joint Petitioners' main point of contention, is applied as it was written, there would still not be the spectrum available to them, or Parma, for their planned system.

Respectfully submitted:

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Chairman
Region 33 800 MHz
Committee

Christine Kinworthy
Counsel of Record

June 20, 2005

ATTACHMENT 1

REGION 33 – OHIO

DOCUMENTATION REQUIRED WITH AN 800 MHz. NPSPAC APPLICATION

Region 33 Plan, Section IV (5) Supplement to the application form (FDR-3)

With each application (APCO form FDR-3 and FCC form ~~574~~ 601) submitted to the Frequency Advisory Committee (FAC), the applicant shall also supply the following supplemental information:

Statement of need for a new system.

Details of the jurisdictional survey showing minimum radio coverage required.

Explanation of how the system will interoperate with related services in other bands.

Explanation of any budget commitment that has been made for the proposed system.

Proposed time schedule for implementation.

Explanation of how the system will interface / interoperate with long-range radio communication such as amateur, satellite and / or emergency management communications systems.

Explanation and certification of how the applicant will comply with the common channel requirements.

Explanation as the extent of participation in a cooperative / multi-agency system.

Explanation and time schedule for vacating presently authorized frequencies (if any).

